

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

CHARLES SCURLOCK,

Plaintiff,

v.

PENTHOUSE INTERNATIONAL
ENTERTAINMENT CONSULTANTS IEC,

Defendant.

Case No. 15-cv-338-JPG-DGW

MEMORANDUM AND ORDER

This matter comes before the Court on plaintiff Charles Scurlock's motion for leave to appeal *in forma pauperis* (Doc. 31).

The Court is puzzled by a fundamental question with respect to Scurlock's "notice of appeal" (Doc. 30) of Magistrate Judge Donald G. Wilkerson's order (Doc. 29) denying Scurlock's motions for recruitment of counsel (Docs. 24 & 26). The notice does not clearly indicate it is an appeal to the Court of Appeals for the Seventh Circuit, which it must do to qualify as a *bona fide* notice of appeal to the Court of Appeals. *See* Fed. R. App. P. 3(c)(1)(C) ("The notice of appeal must . . . name the court to which the appeal is taken."). This leads the Court to believe Scurlock did not intend to appeal to the Court of Appeals and instead intended to appeal to the District Judge under 28 U.S.C. § 636(b)(1)(A).

However, Scurlock filed with his "notice of appeal" a motion for leave to proceed on appeal without prepaying fees and costs (Doc. 31). Since an appeal to the Court of Appeals requires payment of a fee (or leave to proceed without prepayment) but an appeal to the District Judge has no fee, this suggests that perhaps Scurlock did intend to appeal to the Court of Appeals.

Rather than running the risk that Scurlock will be saddled with an appellate fee he did not

intend to incur – the Court is unlikely to grant his motion for leave to appeal *in forma pauperis* because he is appealing an order that is not immediately appealable to the Court of Appeals, *see Randle v. Victor Welding Supply Co.*, 664 F.2d 1064, 1067 (7th Cir. 1981) (*per curiam*) – the Court will seek clarification from Scurlock before taking any action on his motion (Doc. 31).

Accordingly, the Court **ORDERS** Scurlock to file a notice in the District Court on or before July 5, 2016, affirmatively stating whether he intended to appeal Magistrate Judge Wilkerson’s order to the Court of Appeals or the District Judge. Should Scurlock fail to timely file the notice, the Court will assume he intended to appeal to the Court of Appeals and will entertain his motion for leave to proceed on appeal *in forma pauperis*. The Court **RESERVES RULING** on the motion pending receipt of Scurlock’s clarifying notice. The Court further **DIRECTS** the Clerk of Court to transmit a copy of this order to the Court of Appeals for consideration in connection with Appeal No. 16-2414.

IT IS SO ORDERED.

DATED: June 21, 2016

s/ J. Phil Gilbert
J. PHIL GILBERT
DISTRICT JUDGE